

Bail Slip

That the appellant herein/Accused 1 viz., Govindan S/o. Munuswamy was directed to be released on bail as per order of this court dt.4.9.2008 in MP.1/2008 in Crl.A. 571/2000 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.A.No.571 of 2008

Govindan ... Appellant/Accused-1

Versus

State: Rep. by
The Inspector of Police
Korukkupet R.P.F. Chennai
in Cr.NO.280/2002 ...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the Judgment passed by the learned II Additional Sessions Judge, Chennai in S.C.No.507 of 2006 dated 23.07.2008.

For Appellant : Mr.A.Veeramathini
For Respondent : Mr.R.Sekar
Govt. Advocate (Crl.side)

JUDGMENT

A-1 in S.C.No.507 of 2006 on the file of the learned II Additional Sessions Judge, Chennai is the appellant.

2. Along with A-2, the appellant herein/A-1 was tried before the said Court and ultimately, they were convicted and sentenced as under:

Conviction	Sentence
(i) 394 r/w 397 I.P.C.	7 years R.I. and fine Rs.500/- each i/d 3 months S.I.

They have paid the fine amount.

3. This Criminal appeal has been preferred by A-1. There is no appeal filed on behalf of A-2. Thus, this judgment is confined only to A-1 viz., Govindan.

4. The case of the prosecution briefly runs as under:

(i) On 25.10.2002 at about 8.30 p.m., when P.W.5 and his wife P.W.6 and one Mohammed Haji were travelling in the electric train bound to Beach station, while the train was moving near Washermenpet station, appellant/A-1 and A-2 (not appealed) and one Thulasingham entered into the compartment and robbed Rs.2000/- from Mohammed Haji, Cellphone from P.W.5 and gold thali chain and certain gold items from P.W.6 at knife point. Mohammed Haji lodged complaint with P.W.11, Inspector of Police, Korrukupet Railway Police. He registered this case (Ex.P3 F.I.R.). However, Mohammed Haji was not examined.

(ii) P.W.11 took up his investigation. He visited the scene place. Prepared Ex.P5 Observation Mahazar in the presence of P.W.4 and another witness. He drew Ex.P4 Rough sketch. He examined the material witnesses and recorded their statements. Injured persons were treated by Doctors. Injury was noted on the person of P.Ws.5 and 6.

(iii) A-2 Danakumar who was arrested by police in some other case was brought into this case. A-2's confessional statement was recorded by police. In the identification parade conducted by P.W.14, A-2 was identified by P.Ws.5 and 6.

(iv) P.W.12 Crime Inspector took up his further investigation. According to him, on 21.8.2003, A-1 surrendered before the learned Judicial Magistrate, Virudhachalam. He was remanded to judicial custody by XVI Metropolitan Magistrate. Later, he was taken into police custody. His confessional statement was recorded in the presence of witnesses. He was identified by P.W.8 Renuka devi, wife of A-2. P.W.8 stated that A-1 gave her gold items to pledge them. Thereafter, P.W.8 pledged them with P.W.7 Pawn broker. Based on the confession of A-1, P.W.12 seized the said gold items.

(v) Concluding his investigation, the investigation officer filed final report as against A-1 and A-2 for offences under sections 394 r/w 397 I.P.C. in the committal Court.

5. The learned committal Magistrate took cognizance thereon, committed the case to the Court of Principal Sessions Judge, Chennai who made over the case to the II Additional Sessions Judge, Chennai.

6. The learned II Additional Sessions Judge upon hearing both sides and on consideration of the case-records, framed charges under Sections 394 r/w 397 I.P.C. as against A-1 and A-2. They have pleaded not guilty to the charges.

7. To substantiate the charges, prosecution examined P.Ws.1 to 14, marked Exs.P1 to P9 and exhibited M.O.1.

8. Appreciating the said evidence, the trial Court has convicted and sentenced them as already stated.

9. As already stated, this Criminal appeal confines only to A-1 viz., Govindan.

10. It has been contended by the learned counsel for the appellant/A-1, there is no acceptable incriminating evidence as against the apellant/A-1. A-1 was stranger to P.Ws.5 and 6. There was no test identification parade for A-1 by P.Ws.5 and 6. In such circumstances, after 5 long years, the evidence of P.Ws.5 and 6 who stated to have identified A-1 for the first time in the Court cannot be accepted.

11. The learned counsel for the appellant/A-1 further contended that Section 27 Evidence Act recovery based on confessional statement of the appellant/A-1 is stage-managed. The recovery witness P.W.8 has not identified A-1 who alleged to have gave her jewels. P.W.7 Pawn broker's evidence does not link A-1 with this case. Above all, there is no Mahazar for recovery made by the police. Further, gold items alleged to have robbed by A-1 were not marked as material objects. Thus, the prosecution thoroughly failed to establish the charges as against A-1 beyond all reasonable doubts.

12. On the other hand, the learned Govt. Advocate (Crl.side) would contend that a daring robbery has been committed in a moving train by A-1 by wielding knife. He has assaulted P.Ws.5 and 6. Cellphone and gold items were recovered based on the confessional statement of A-1 himself. Above all, P.Ws.5 and 6 who have seen A-1 in the train robbery have identified them in the Court. Thus, the prosecution has established the charges as against the appellant/A-1 beyond all reasonable doubts.

13. I have anxiously considered the rival submissions, perused the impugned judgment and the entire materials on record.

14. Now, the question before us is whether the charges under Sections 394 r/w 397 I.P.C. framed as against A-1 has been proved beyond all reasonable doubts ?

15. It is a case of robbery committed in a moving train. The occurrence was stated to have taken place on 25.10.2002 at about 8.30 p.m. when the train was nearing

Washermenpet railway station. The victim is one Mohammed Haji who has been stated to have been robbed Rs.2000/- by A-1 at knife point, was not examined.

16. Further version of the prosecution is that A-1 with knife robbed a Cellphone from P.W.5 and he also robbed gold thali chain from P.W.6, wife of P.W.5 at knife point.

17. In this case, even as per the prosecution version prior to commission of the offence, identity of A-1 is not known to either P.W.5 or P.W.6 or any other witnesses examined by the prosecution. According to P.W.12, Crime Inspector of Police, who took up further investigation in this case, has stated that A-1 has surrendered on 21.8.2003 before the learned Judicial Magistrate, Virudhachalam. It is stated that based on his confessional statement, thali chain belongs to P.W.6 was recovered from P.W.7 Pawn broker. According to P.W.7, P.W.8, wife of A-2 pledged the gold jewels in his shop. P.W.8 in her evidence, has stated that a lean man in black colour gave her jewels. P.W.8 did not say that he identified A-1 who was present in the Court when P.W.8 was examined. Further, gold jewels stated to have been recovered from P.W.7 has not been exhibited in this case.

18. The alleged robbery took place in a moving train on 25.10.2002. On 31.1.2007, P.Ws.5 and 6 were examined in the Court. On that day, for the first time, P.Ws.5 and 6 identified A-1 in the Court. As already stated, identity of A-1 is not known to P.Ws.5 and 6 prior to the alleged occurrence. There was no proper test identification parade with respect to A-1 by P.Ws.5 and 6. In such circumstances, identity of A-1 by P.Ws.5 and 6 in the Court is substantive piece of evidence. They have stated that they have identified A-1 in the Court nearly five years after the alleged occurrence. Such identification parade of the accused in the Court in the facts and circumstances cannot be believed. In this respect, we cannot rely on the evidence of P.Ws.5 and 6.

19. In this case, the main piece of incriminating evidence adduced by the prosecution to implicate the appellant/A-1 in this case is recovery of gold chain with reference to which P.Ws.7, 8 and 12 were examined. In this case, Section 27 Evidence Act recovery is not established.

20. Identification of A-1 in the Court by P.Ws.5 and 6 after 5 long years for the first time cannot be believed. Excluding such recovery evidence and identification evidence from the zone of consideration, nothing incriminating as against appellant/A-1. Thus, this Court has no hesitation to held that the prosecution has not established the charges under section

397 I.P.C. as against appellant/A-1 beyond all reasonable doubts.

21. In view of the foregoing, it is ordered as under:

(1) This Criminal appeal is allowed.

(2) The conviction recorded and the sentence awarded to the appellant/A-1 are set aside.

(3) Appellant/A-1 acquitted from the charge under section 397 I.P.C.

(4) Fine amount paid by him shall be refunded. Appeal bail bond executed by him shall stand cancelled.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge, City Civil Court, Chennai.
2. The II Additional Sessions Judge, City Civil Court, Chennai.
- 3 The XVI Metropolitan magistrate, Chennai
4. The Superintendent, Central Prison, Puzhal, Chennai.
5. The Inspector of Police, Chennai Korukkupet, RPF Chennai
6. The Public Prosecutor, High Court, Madras.
- 7 The Director Secretary Police, Mylapore, Chennai
- 8 The District Collector, Chennai
- 9 do thro The Chief Metropolitan Magistrate, Chennai

+1cc to Mr.A. Veeramathini, Advocate, S.R.No.65228

rj(CO)

md(02/01/2017)

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